

APPEAL NO. 052163
FILED NOVEMBER 1, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 15, 2005, with the record closing on August 16, 2005. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable _____, injury extends to and includes disc herniations at levels C4-5 and C5-6 of his spine and that the claimant has had disability from November 6, 2003, through the date of the CCH. The appellant (carrier) appealed, disputing both the extent-of-injury and disability determinations. The carrier contends that the hearing officer's decision and order regarding the disputed issues was clearly not supported by sufficient evidence, as well as legal precedent, and is so contrary to the overwhelming weight of the credible evidence as to be clearly wrong or manifestly unjust. The carrier additionally contends that the hearing officer's conduct during the CCH showed bias and prevented the carrier from receiving a fair hearing. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable lumbar strain/sprain and cervical strain/sprain injury. Whether the compensable injury extended to include disc herniations at C4-5 and C5-6 and whether the claimant had disability were at issue. During the course of the carrier's closing argument, the hearing officer attempted to ask the carrier's attorney a question. The carrier's attorney became upset at this perceived interruption and a heated discussion ensued between the hearing officer and the carrier's attorney. The hearing officer stated she would recess the CCH and issue an interlocutory order and the parties would be required to come back for closing argument of the carrier and the carrier's attorney would have to explain to his client what happened. The hearing officer then said she would contact the firm the carrier's attorney worked for as well as the carrier. After another exchange the hearing officer then told the carrier's attorney to "shut up" and get out of her office.

Section 410.163(b) provides that a hearing officer "shall ensure the preservation of the rights of the parties and the full development of facts required for the determination to be made." A hearing officer must not depart from the role of an unbiased and impartial fact finder. Appeals Panel Decision (APD) 972163, decided December 8, 1997. A review of the record reflects the level of frustration experienced, with some justification, by the hearing officer over the way the carrier's counsel presented its case. Regardless of the provocation, the hearing officer we believe, engaged in argument and personal comments about the carrier's counsel which, at a minimum, compromised the appearance of impartiality required of all hearing officers. APD 941146, decided October 7, 1994. This exchange indicated bias on her part

against the carrier's counsel and may have been reflected in her decision on the merits. To insure a fair and impartial hearing for the carrier, we reverse the decision of the hearing officer and remand this case for a new hearing conducted by another hearing officer.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation Division of Hearings pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge